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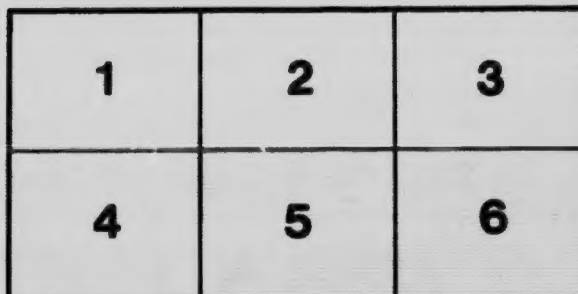
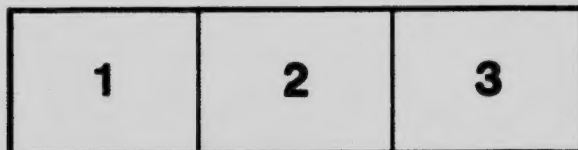
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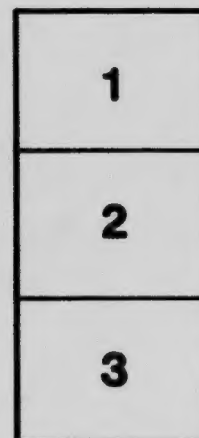
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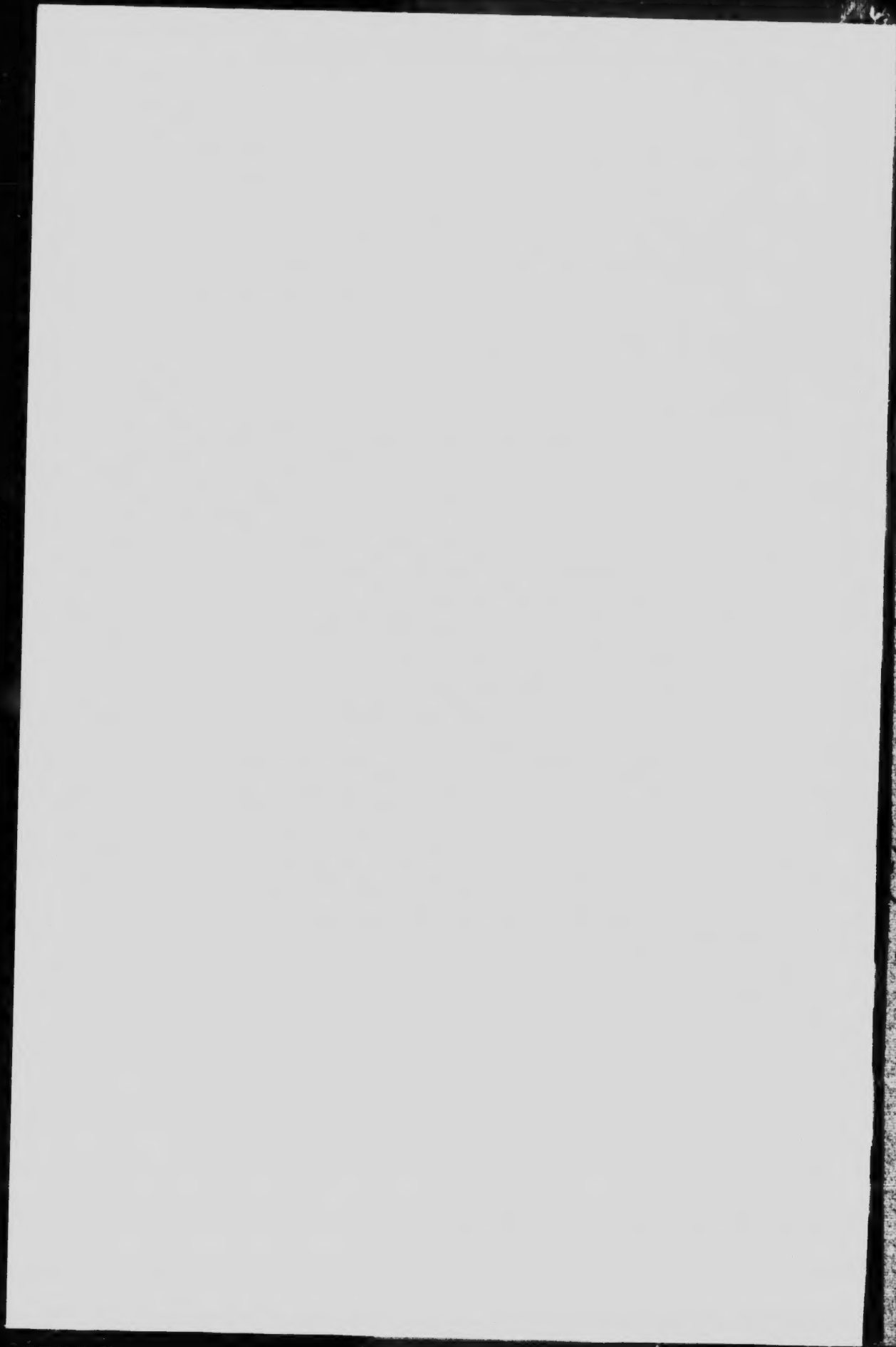
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THE  
CANADA COMPANIES' ACT 1902

ANNOTATED

MORRIS, HOLT & GAUDET

SOLE AGENTS MONTREAL

At the request of the Canadian Bankers Association

MONTREAL

C. THORET, LAW BOOK PUBLISHER

11 & 13 St. James Street

1902

*Library of Parliament*

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**TABLE OF CONCORDANCE.**  
**BETWEEN THE NEW AND THE OLD ACT.**

NEW.	OLD.	NEW.	OLD.	NEW.	OLD.
1	1	31	55	61	29
2	—	32	56	62	34
3	2	33	57	63	30
4	78	34	80	64	31
5	3	35	93	65	32
6	4-5	36	25	66	33
7	—	37	26	67	82
8	7	38	62-63 Vc. 40	68	35
9	8	39	81	69	58
10	9	40	17	70	59
11	—	41	18	71	60
12	—	42	19	72	74
13	69	43	20	73	33
14	10	44	21	74	43
15	11	45	22	75	44
16	12	46	—	76	45
17	84	47	39	77	46
18	—	48	40	78	47
19	83	49	41	79	—
20	23	50	42	80	62
21	24	51	48	81	63
22	61	52	49	82	64
23	75	53	50	83	65
24	76	54	51	84	66
25	79	55	52	85	67
26	13	56	53	86	68
27	14	57	37	87	—
28	15	58	73	88	85
29	16	59	36	89	103
30	54	60	28	90	—

**TABLE OF CONCORDANCE.**  
**BETWEEN THE OLD AND THE NEW ACT.**

OLD.	NEW.	OLD.	NEW.	OLD.	NEW.
1	1	37	57	71	—
2	3	38	—	72	—
5	Omitted	39	47	73	58
6	7	40	48	74	72
7	8	41	49	75	23
8	9	42	50	76	24
9	10	43	74	77	—
10	14	44	75	78	4
11	15	45	76	79	25
12	16	46	77	80	34
13	26	47	78	81	39
14	27	48	51	82	67
15	28	49	52	83	19
16	29	50	53	84	17
17	40	51	54	85	88
18	41	52	55	86	—
19	42	53	56	87	—
20	43	54	30	88	—
21	44	55	31	89	—
22	45	56	32	90	—
23	20	57	33	91	—
24	21	58	69	92	—
25	36	59	70	93	—
26	37	60	71	94	—
27	—	61	22	95	—
28	60	62	80	96	—
29	61	63	81	97	—
30	63	64	82	98	—
31	64	65	83	99	—
32	65	66	84	100	—
33	66-73	67	85	101	—
34	62	68	86	102	—
35	68	69	13	103	—
36	59	70	12		



# The Canada Companies' Act 1902.

AN ACT RESPECTING THE INCORPORATION OF JOINT STOCK  
COMPANIES BY LETTERS PATENT.

[Assented to 15th May, 1902.]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

**1. Short title.**—This Act may be cited as "*The Companies Act, 1902.*"

**2. Application of Act.**—This Act applies to—

- (i) All companies incorporated under it ;
- (b.) All companies incorporated under *The Companies Act*, chapter 119 of the Revised Statutes, or to which that Act applied before the passing of this Act, except loan companies.

**3. Interpretation.**—In this Act, and in all letters patent and supplementary letters patent issued under it, unless the context otherwise requires,—

- (a.) the expression "the company" or "a company" means any company to which this Act applies ;
- (b.) the expression "the undertaking" means the business of every kind which the Company is authorized to carry on ;
- (c) the expression "real estate" or "land," includes messuages, lands, tenements and hereditaments of any tenure, and all immoveable property of any kind ;
- (d.) the expression "shareholder" means every subscriber to or holder of stock in the company, and includes the personal representatives of the shareholder ;
- (e.) the expression "manager" includes the cashier and the secretary.

This section reproduces sec. 2 of R. S. C. c. 119 and contains no material change. In subsection (a) however of the old act the words "a company" were omitted and the old act was made to apply to "companies incorporated by Letters Patent under this act".

Subsection (c) of the old act relating to loan companies has been entirely omitted. This is in accord with the tenor of the whole act, in which all reference to loan companies is omitted.



**4. Preliminaries.**—The provisions of this Act relating to matters preliminary to the issue of the letters patent or supplementary letters patent shall be deemed directory only, and no letters patent or supplementary letters patent issued under this Act shall be held void or voidable on account of any irregularity in respect of any matter preliminary to the issue of the letters patent or supplementary letters patent.

This section reproduces sec. 78 of the old act omitting the reference to the notice now abolished.

#### FORMATION OF NEW COMPANIES.

**5. Companies for certain purposes may be incorporated by letters patent.**—The Secretary of State may, by letters patent under his seal of office, grant a charter to any number of persons, not less than five, who apply therefor, constituting such persons, and others who have become subscribers to the memorandum of agreement hereinafter mentioned and who thereafter become shareholders in the company thereby created, a body corporate and politic, for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends, except the construction and working of railways or of telegraph or telephone lines, or the business of banking and the issue of paper money, or the business of insurance, or the business of a loan company.

2. The Governor in Council may from time to time designate the seal of office to be used by the Secretary of State as the seal under which letters patent may be granted under this Act.

The changes in this section consist in the substitution of the Secretary of State for the Governor in Council and the excepting of telegraph or telephone lines and loan companies from the operation of the act.

**6. Application for letters patent.**—The applicants for such letters patent, who must be of the full age of twenty-one years, shall file in the Department of the Secretary of State an application setting forth the following particulars:—

(a.) The proposed corporate name of the company, which shall not be that of any other known company, incorporated or unincorporated, or any name liable to be confounded therewith, or otherwise, on public grounds, objectionable;

(b.) The purpose for which its incorporation is sought;

(c.) The place within Canada which is to be its chief place of business;

(d.) The proposed amount of its capital stock;

(e.) The number of shares and the amount of each share;

(f.) The names in full and the address and calling of each of the applicants, with special mention of the names of not more than fifteen and not less than three of their number, who are to be the first or provisional directors of the company;

(g) The amount of stock taken by each applicant, the amount, if any, paid in upon the stock of each applicant, and the manner in which the same has been paid, and is held for the company.

Section 4 of the old act requiring one month's notice of the application has been omitted from this act. The information formerly required to be given in the notice is now given in the application alone. Subsection (f) of the old act is not reproduced in full, the qualification that a majority of the Directors shall be resident in Canada has been entirely omitted. The provision of the old act sec. 5 subsect. 3, which requires that the aggregate of stock taken shall be at least one half the total amount of proposed capital stock is omitted. Further the provisions sec. 5, (subsecs. 4, 5a and 5b) that the aggregate paid in to the receiver general shall be 10 % is omitted. It is to be noted however that sec. 18, *infra* provides for 10 % being paid up before Company begins operations. In default of this 10 % being paid the Directors are made personally liable for the debts of the Company. Sec. 5, subsection 5 (c) of the old act regarding real estate being put in in payment of stock is also omitted.

**7. Memorandum of agreement.**—The application may ask for the embodying in the letters patent of any provision which, under this Act, might be made by by-law of the company or by by-law of the directors approved by a vote of shareholders ; and such provision so embodied shall not, unless provision to the contrary is made in the letters patent, be subject to repeal or alteration by by-law.

The application shall be accompanied by a memorandum of agreement, in duplicate under seal, both of which may be similar to—and shall in their essential features conform to—the Forms A. and B. in the first schedule to this Act.

Before the letters patent are issued, the applicants shall establish, to the satisfaction of the Secretary of State, the sufficiency of their application and memorandum of agreement and the truth and sufficiency of the facts therein set forth, and that the proposed name is not the name of any other known incorporated or unincorporated company, or any name likely to be confounded therewith ; and for that purpose, the Secretary of State shall take and keep of record any requisite evidence in writing, by oath or affirmation or by solemn declaration.

The first parag. of this section is entirely new. Further the Secretary of State is alone charged with the duty of examining proof, etc., required under last para. Formerly under old act it was the Secretary of State or "such other officer as was charged by the Govr. in Council to do so."

**8. Facts to be recited in letters patent.**—The letters patent shall recite such of the established averments in the application and memorandum of agreement as to the Secretary of State seems expedient.

This reproduces sec. 7 of the old act omitting the reference to the notice now abolished and substituting the Secretary of State for the Governor in Council.

**9. Secretary may give another corporate name.**—The Secretary of State may give to the company a corporate name.

different from that proposed by the applicants if the proposed name is objectionable.

The only changes in this section from sec. 8 of the old act are the substitution of the Secretary of State for the Govr. in Council and the omission of the reference to the notice now abolished.

**10. Notice of issuing letters patent.**—Notice of the granting of the letters patent shall be forthwith given by the Secretary of State by two insertions in the *Canada Gazette*, in the form U in the first schedule to this Act; and thereupon, from the date of the letters patent, the persons therein named and such person as have become subscribers to the memorandum of agreement or who thereafter become shareholders in the company, and their successors, shall be a body corporate and politic, by the name mentioned in the letters patent; and a copy of every such notice shall forthwith be, by the company to which such notice relates, inserted on four separate occasions in at least one newspaper in the county, city or place where the head office or chief agency is established.

2. If the company fails or neglects to cause such copy to be so inserted, it is guilty of an offence and liable on summary conviction before two justices of the peace to a penalty not exceeding twenty dollars for each day that such failure or neglect continues.

Sec. 9 of the old act is followed except that two insertions in *Canada Gazette* are now required. The words "and such persons as have become subscribers to the memorandum of agreement or who thereafter become shareholders in the Company" are new. Sec. 2, establishing a penalty on the Company for neglect to insert notices is also new.

#### PROVISIONS AS TO EXISTING COMPANIES.

**11. Existing companies may apply for charters under this Act.**—Any company heretofore incorporated for any purpose or object for which letters patent may be issued under this Act, whether under a special or a general Act, and now being a subsisting and valid corporation, may apply for letters patent to carry on its business under this Act, and the Secretary of State, with the approval of the Governor in Council, may direct the issue of letters patent incorporating the shareholders of the said company as a company under this Act; and thereupon all the rights and obligations of the former company shall be transferred to the new company, and all proceedings may be continued or commenced by or against the new company that might have been continued or commenced by or against the old company; and it shall not be necessary in any such letters patent to set out the names of the shareholders; and after the issue of the letters patent the company shall be governed in all respects by the provisions of this Act, except that the liability of the shareholders to creditors of the old company shall remain as at the time of the issue of the letters patent.

This reproduces sec. 69 of the old act omitting the reference to the notice and inserting the reference to the Secretary of State.

**12. Subsisting companies may apply for charters with extended powers.**—If a subsisting company applies for the issues of letters patent under this Act, the Secretary of State may, by the letters patent, extend the powers of the company to such other objects for which letters patent may be issued under this Act as the applicant desires and as the Secretary of State thinks fit to include in the letters patent; and the Secretary of State may, in the said letters patent, name the first directors of the new company; and the letters patent may be issued to the new company by the name of the old company or by another name.

This reproduces old sec. 70 with the substitution of the Secretary of State for the Govr. in Council.

**13.** Any company incorporated under any general or special Act of any of the Provinces of Canada, and any company duly incorporated under the laws of the United Kingdom or of any foreign country for any of the purpose or objects for which letters patent may be issued under this Act, and being at the time of the application a subsisting and valid corporation, may apply for letters patent under this Act, and the Secretary of State, upon receiving satisfactory evidence that the Act of incorporation or charter of the company so applying is valid and subsisting and that no public or private interest will be prejudiced, may issue letters patent incorporating the shareholders of the company so applying as a company under this Act, limiting, if necessary, the powers of the said company to such purposes or objects as might have been granted had the shareholders applied in the first instance to the Secretary of State for letters patent under this Act, and thereupon all the rights and obligations of the former company shall be transferred to the new company, and all proceedings may be continued or commenced by or against the new company that might have been continued or commenced by or against the old company; and it shall not be necessary in any such letters patent to set out the names of the shareholders; and after the issue of the letters patent the company shall be governed in all respects by the provisions of this Act, except that the liability of the shareholders to creditors of the old company shall remain as at the time of the issue of the letters patent.

2. Every company desirous of obtaining letters patent under this section shall first file in the office of the Secretary of State of Canada a certified copy of the charter or Act incorporating the company, and shall also designate the place in Canada where its principal office will be situated and the name of the agent or manager in Canada authorized to represent the company and to

accept process in all suits and proceedings against the company for any liabilities incurred by the company therein.

8. Every such company to which such letters patent have been granted, when so required, shall make a return to the Secretary of State of the names of its shareholders, the amount of its paid up capital and the value of its real and personal estate held in Canada, and in default of making the said return within three months the letters patent may be cancelled.

4. Notice of the issue of such letters patent shall be published in *The Canada Gazette*.

5. The fees payable for such letters patent shall, from time to time, be fixed by the Governor in Council.

The old section 69, was applicable to "any Company heretofore incorporated for any purpose or object for which Letters Patent might be issued under this act whether under a special or general act." The notice of application received under the old act is abolished. Notice of the issue of the Letters Patent is now given. The Secretary of State is substituted for the Governor in Council to act under this section. This new section is more stringent than the old one in providing that no public or private interest must be prejudiced. Subsections 2, 3, 4 and 5 of this section are new.

#### CHANGE OF NAME

**14. Governor may change name by supplementary patent.**— If it is made to appear, to the satisfaction of the Secretary of State that the name of a company (whether given by the original or by supplementary letters patent, or on amalgamation) is the same as the name of an existing incorporated or unincorporated company, or so similar thereto as to be liable to be confounded therewith, the Secretary of State may direct the issue of supplementary letters patent, reciting the former letters and changing the name of the company to some other name which shall be set forth in the supplementary letters patent.

The only change here from the old section 10 is the substitution of the Secretary of State for the Governor in Council.

**15. Company may obtain change of name.**— When a company is desirous of adopting another name, the Secretary of State, upon being satisfied that the change desired is not for any improper purpose, may direct the issue of supplementary letters patent, reciting the former letters patent and changing the name of the company to some other name, which shall be set forth in the supplementary letters patent.

The only change in this sec. from the old law sec. 11 is the substitution of the Secretary of State for the Govr in Council.

**16. Change not to affect rights or obligations.**— No alteration of its name under the two sections next preceding shall affect the rights or obligations of the company; and all

proceedings may be continued or commenced by or against the company under its new name that might have been continued or commenced by or against the company under its former name.

This section is the same as section 12 of the old act.

#### FEES.

**17. Fees on letters patent, etc., to be fixed by Governor in Council.**—The Governor in Council may, from time to time, establish, alter and regulate the tariff of the fees to be paid on application for letters patent and supplementary letters patent under this Act, and may prescribe the forms of proceeding and registration in respect thereof, and all other matters requisite for carrying out the objects of this Act ;

2 The amount of the fees may be varied according to the nature of the company, the amount of the capital stock and other particulars as the Governor in Council thinks fit :

3. No steps shall be taken in the department of the Secretary of State towards the issue of any letters patent or supplementary letters patent under this Act, until after all fees therefor are duly paid.

This section is similar to section 84 of the old act, except that the old act provided that the Govr in Council might designate the depart. through which the issue of Letters Patent and supplementary Letters Patent should take place. Now they are issued entirely by the Secretary of State.

#### COMMENCEMENT OF BUSINESS.

**18. Ten per cent of capital to be paid.**—The Company shall not commence its operations or incur any liability before ten per centum of its authorized capital has been subscribed and paid for. Every director who expressly or impliedly authorizes such operations being so commenced or liabilities being so incurred shall be jointly and severally liable with the Company for the payment of such liabilities.

This section is new ; but see note to sec. 6 *supra*.

#### FORFEITURE OF CHARTER.

**19. Forfeiture of charter for non-user.**—The charter of the company shall be forfeited by non-user during three consecutive years, or if the company does not go into actual operation within three years after it is granted.

This section reproduces sec. 83 of the old act.



## GENERAL POWERS AND DUTIES OF THE COMPANY.

**20. Powers given to be subject to this Act.**—All powers given to the company by the letters patent or supplementary letters patent shall be exercised subject to the provisions and restrictions contained in this Act.

This section reproduces sec. 23 of the old act.

**21. General corporate powers.**—The company may acquire, hold, mortgage, sell and convey any real estate requisite for the carrying on of the undertaking of the company, and shall, if incorporated under this Act, forthwith become and be invested with all property and rights, real and personal, theretofore held by it or for it under any trust created with a view to its incorporation, and with all the powers, privileges and immunities requisite or incidental to the carrying on of its undertaking, as if it was incorporated by a special Act of Parliament, embodying the provisions of this Act and of the letters patent.

This reproduces old section 24. The word "mortgage" in the first line is new. The reference in the old section to loan companies is of course also struck out.

**22. Offices and agencies of the company in Canada.**—The company shall, at all times, have an office in the city or town in which its chief place of business in Canada is situate, which shall be the legal domicile of the company in Canada; and notice of the situation of such office and of any change therein shall be published in the *Canada Gazette*; and the company may establish such other offices and agencies elsewhere as it deems expedient.

This reproduces old section 61. The only change consists in the addition of the words "in Canada" in the 2d line.

**23. Acts of company's attorney valid.**—Every deed which any person, lawfully empowered in that behalf by the company as its attorney, signs on behalf of the company, and seals with his seal, shall be binding on the company and shall have the same effect as if it was under the seal of the company.

This reproduces sec. 75 of the old act, without change.

**24. Contracts, etc., when to be binding on company.**—Every contract, agreement, engagement or bargain made, and every bill of exchange drawn, accepted or indorsed, and every promissory note and cheque made, drawn or indorsed on behalf of the company, by any agent, officer or servant of the company, in general accordance with his powers as such under the by-laws of the company, shall be binding upon the company: and in no case



shall it be necessary to have the seal of the company affixed to any such contract, agreement engagement, bargain, bill of exchange, promissory note or cheque, or to prove that the same was made, drawn, accepted or indorsed, as the case may be, in pursuance of any by-law or special vote or order; and the person so acting as agent, officer or servant of the company shall not be thereby subjected individually to any liability whatsoever to any third person therefor: Provided always, that nothing in this Act shall be construed to authorize the company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money, or as the note of a bank, or to engage in the business of banking or insurance.

This section reproduces sec. 76 of the old act without change.

**25. Word "limited" to be inserted after name of company on all notices, etc.**—The company shall keep its name, with the word "limited" after the name, painted or affixed, in letters easily legible, in a conspicuous position on the outside of every office or place in which the business of the company is carried on, and shall have its name, with the said word after it, engraven in legible characters on its seal, and shall have its name, with the said words after it, mentioned in legible characters, in all notices, advertisements, and other official publications of the company and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods, purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices and receipts of the company:

2. Every company which does not keep painted or affixed, its name, with the word "limited" after it, in manner directed by this Act, shall incur a penalty of twenty dollars for every day during which such name is not so kept painted or affixed:

3. Every director and manager of the company, who knowingly and wilfully authorizes or permits such default, shall be liable to the like penalty:

4. Every director, manager or officer of the company, and every person on its behalf, who uses or authorizes the use of any seal purporting to be a seal of the company, whereon its name, with the said word "limited" after it, is not so engraven as aforesaid, or who issues, or authorizes the issue of any notice, advertisement or other official publication of such company, or who signs or authorizes to be signed on behalf of such company any bill of exchange, promissory note, indorsement, cheque, order for money or goods, or who issues or authorizes to be issued any bill of parcels, invoice or receipt of the company, wherein its name, with the said word after it, is not mentioned in manner aforesaid, shall incur a penalty of two hundred dollars, and shall also be personally

liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

This reproduces sec. 79 of the old act.

#### OBTAINING OF FURTHER POWERS.

**26. Company may authorize directors to apply for extension of powers.**—The company may, from time to time, by a resolution passed by the votes of shareholders representing at least two-thirds in value of the subscribed stock of the company, at a special general meeting called for the purpose, authorize the directors to apply for supplementary letters patent, extending the powers of the company to such other purposes or objects, for which a company may be incorporated under this Act, as are defined in the resolution.

This reproduces sec. 13 of the old act.

**27. Application by directors.**—The directors may, at any time within six months after the passing of any such resolution, make application to the Secretary of State, for the issue of such supplementary letters patent.

This reproduces sec. 14 of the old act, but omits the requirement of onemonth's notice of application found in the old section.

**28. Proof to be furnished to Secretary of State.**—Before such supplementary letters patent are issued, the applicants shall establish to the satisfaction of the Secretary of State the due passing of the resolution authorizing the application, and for that purpose the Secretary of State shall take and keep of record any requisite evidence in writing, by oath or affirmation, or by statutory declaration under *The Canada Evidence Act*, 1893.

This reproduces sec. 15 of the old act, omitting the words of the old section allowing an officer other than the Secretary of State to act and the old section closed with the words "oath or affirmation or by solemn declaration."

**29. Grant of supplementary letters patent.**—Upon due proof so made, the Secretary of State may grant supplementary letters patent extending the powers of the company to all or any of the objects defined in the resolution; and notice thereof shall be forthwith given by the Secretary of State, in the *Canada Gazette*, in the form D in the first schedule to this Act; and thereupon, from the date of the supplementary letters patent, the undertaking of the company shall extend to and include the other purposes or objects set out in the supplementary letters patent as fully as if such other purposes or objects were mentioned in the original

letters patent; and a copy of every such notice shall forthwith be, by the company to which the notice relates, inserted on four separate occasions in at least one newspaper in the county, city or place where the head office or chief agency is established.

2. If the company fails or neglects to cause such copy to be inserted, it is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding twenty dollars for each day that such failure or neglect continues.

This reproduces sec. 16 of the old act. The old section however provided for the grant of supplementary Letters Patent by the Governor in Council. Subsection 2, of this section providing for a penalty on the Company is new.

#### LIABILITY OF SHAREHOLDERS.

##### **30. Liability limited to amount unpaid on stock.**

—The shareholders of the company shall not, as such be responsible for any act, default or liability of the company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing relating to or connected with the company, beyond the amount unpaid on their respective shares in the capital stock thereof.

This section reproduces sec. 54 of the old act.

##### **31. Liability of shareholders. When to accrue.—**

Every shareholder, until the whole amount of his shares has been paid up, shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon; but he shall not be liable to an action therefor by any creditor until an execution at the suit of such creditor against the company has been returned unsatisfied in whole or in part; and the amount due on such execution, not exceeding the amount unpaid on his shares, as aforesaid, shall be the amount recoverable, with costs, from such shareholder; and any amount so recoverable, if paid by the shareholder shall be considered as paid on his shares.

2. Any shareholder may plead by way of defence in whole or in part any set-off which he can set up against the company, except a claim for unpaid dividends, or a salary or allowance as a president or a director of the company.

This section reproduces sec. 55 of the old act. But subsec. 2, is new. This subsection contains an important change, see *Union Bank v. Morris and Co v. Code S. C. R.* Ruling under the old act on sec. 55.

##### **32. Trustees, etc., entitled to vote.—**No person, holding stock in the company as an executor, administrator, tutor, curator, guardian or trustee of or for any person named in the books of the company as being so represented by him, shall be personally subject to liability as a shareholder; but the estate and funds in the hands of such person shall be liable in like

manner, and to the same extent, as the testator or intestate, or the minor, ward or interdicted person, or the person interested in such trust fund would be, if living and competent to act and holding such stock in his own name; and no person holding such stock as collateral security shall be personally subject to such liability, but the person pledging such stock shall be considered as holding the same and shall be liable as a shareholder accordingly.

This section reproduces sec. 56 of the old act. The words "of or for any person named in the books of the company as being so represented by him" are new.

**33. Trustees, etc., not personally liable.**—Every such executor, administrator, curator, guardian or trustee shall represent the stock held by him, at all meetings of the company, and may vote as a shareholder; and every person who pledges his stock may represent the same at all such meetings and, notwithstanding such pledge, vote as a shareholder.

This reproduces sec. 57 of the old act without change.

#### PROSPECTUS, &c.

**34.**—Every prospectus of the company, and every notice inviting persons to subscribe for shares in the company, shall specify the dates and the names of the persons to any contract entered into by the company or the promoters, directors or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company or otherwise; and every prospectus or notice which does not specify the same shall, with respect to any person who takes shares in the company on the faith of such prospectus or notice, and who has not had notice of such contract, be deemed fraudulent on the part of the promoters, directors and officers of the company who knowingly issue such prospectus or notice.

This reproduces sec. 80 of the old act without change.

#### HOLDING STOCK OF OTHER COMPANIES.

**35. Conditions for purchase of stock of other companies.**—The company shall not under any circumstances use any of its funds in the purchase of stock in any other corporation, unless and until the directors have been expressly authorized by a by-law passed by them for the purpose and sanctioned by a vote of not less than two-thirds in value of the capital stock represented at a general meeting of the company duly called for considering the subject of the by-law; provided always that if the letters patent authorize such purchase, it shall not be necessary to pass such by-law.

The old section 93 dealt with this subject. But merely enacted the prohibition to purchase such stock. The qualification allowing the purchase by by-law, etc., is new and completely changes the effect of the section.

## CAPITAL STOCK.

**36. Stock to be personal estate.**—The stock of the company shall be personal estate, and shall be transferable, in such manner, and subject to all such conditions and restrictions as are prescribed by this Act or by the letters patent or by by-laws of the company.

This reproduces sec. 25 of the old act.

**37. Allotment of stock.**—If the letters patent, or the supplementary letters patent, make no other definite provision, the stock of the company, or any increased amount thereof, so far as it is not allotted thereby, shall be allotted at such times and in such manner as the directors prescribe by by-law.

This reproduces old section 26.

**38. Preference stock.**—The directors of the company may make a by-law for creating and issuing any part of the capital stock as preference stock, giving the same such preference and priority, as respects dividends and in any other respect, over ordinary stock as is declared by the by-law.

2. The by-law may provide that the holders of shares of such preference stock shall have the right to select a certain stated proportion of the board of directors, or may give them such other control over the affairs of the company as is considered expedient.

3. No such by-law shall have any force or effect whatever until after it has been sanctioned by a vote of three-fourths of the shareholders, present in person or by proxy at a general meeting of the company duly called for considering the same and representing two-thirds of the stock of the company, or unanimously sanctioned in writing by the shareholders of the company.

4. Holders of shares of such preference stock shall be shareholders within the meaning of this Act, and shall in all respects possess the rights and be subject to the liabilities of shareholders within the meaning of this Act; provided, however, that in respect of dividends and in any other respect declared by by-law as authorized herein, they shall, as against the ordinary shareholders, be entitled to the preferences and rights given by such by-law.

This section reproduces the terms of the act 62-63 Vic. cap. 40. The subsec. 3 reproduces sec. 3 of the latter act, but formerly the unanimous vote of  $\frac{3}{4}$  of the shareholders was required for the by-law; now  $\frac{3}{4}$  of the shareholders representing  $\frac{3}{4}$  of the stock is required. The intervention of the Govr. in Council authorized by the old act is omitted.

**39. Company not bound to see to execution of trusts.**—The company shall not be bound to see to the execution of any trust, whether express, implied or constructive, in respect of any share; and the receipt of the shareholder in whose name the same stands in the books of the company, shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share, and whether or not notice of such trust has been given to the company; and the company shall not be bound to see to the application of the money paid upon such receipt.

This reproduces sec. 81 of the old act, without change.

#### INCREASE OR REDUCTION OF CAPITAL, &c.

**40. Subdivision of shares.**—The directors of the company may, at any time, make a by-law subdividing the existing shares into shares of a smaller amount.

This reproduces old sec. 17.

**41. Increase of capital.**—The directors of the company may, at any time after ninety per cent. of the capital stock of the company has been taken up and fifty per cent. thereon paid in, make a by-law for increasing the capital stock of the company to any amount which they consider requisite for the due carrying out of the objects of the company;

2. Such by-law shall declare the number of the shares of the new stock, and may prescribe the manner in which the same shall be allotted; and in default of its so doing, the control of such allotment shall vest absolutely in the directors.

This reproduces sec. 16 of the old act, with one change only viz: the substitution of "ninety per cent of the capital stock" in the second line, in place of the whole of the capital stock.

**42. Reduction of capital.**—The directors of the company may, at any time, make a by-law for reducing the capital stock of the company to any amount which they consider advisable and sufficient for the due carrying out of the undertaking of the company;

2. Such by-law shall declare the number and value of the shares of the stock as so reduced, and the allotment thereof, or the manner in which the same shall be made;

3. The liability of shareholders to persons who were, at the time of the reduction of the capital, creditors of the company, shall remain the same as if the capital had not been reduced.

This reproduces sec. 19 of the old act, without change except the necessary omission of all reference to loan companies.

**43.** No by-law for increasing or reducing the capital stock of the company, or for subdividing the shares, shall have any force or effect whatsoever, until it is approved by the votes of shareholders representing at least two-thirds in value of all the subscribed stock of the company, at a special general meeting of the company duly called for considering the same, and afterwards confirmed by supplementary letters patent.

This section reproduces sec. 20 of the old act.

**44. Application for supplementary letters patent to confirm by-law.**—At any time, not more than six months after such sanction of such by-law, the directors may apply to the Secretary of State, for issue of supplementary letters patent to confirm the same :

2. The directors shall, with such application, produce a copy of such by-law, under the seal of the company, and signed by the president or vice-president and the secretary, and establish to the satisfaction of the Secretary of State, the due passage and approval of such by-law, and the expediency and *bond fide* character of the increase or reduction of capital or subdivision of shares, as the case may be, thereby provided for :

8. The Secretary of State shall, for that purpose, take and keep of record any requisite evidence in writing, by oath or affirmation or by solemn declaration, as above mentioned.

This reproduces sec. 21 of the old act, but the application is substituted for the old petition. Further the old section read in place of line 3 "signed by president, vice president or Secretary" lastly the reference to a department other than that of the Secretary of State is omitted.

**45. Granting of supplementary letters patent.**—Upon due proof so made, the Secretary of State may grant such supplementary letters patent ; and notice thereof shall be forthwith given by the Secretary of State in the *Canada Gazette*, in the form E in the first schedule to this Act : and thereupon, from the date of the supplementary letters patent, the capital stock of the company shall be and remain increased or reduced, or the shares shall be subdivided, as the case may be, to the amount, in the manner and subject to the conditions set forth by such by-law ; and the whole of the stock, as so increased or reduced, shall become subject to the provisions of this Act, in like manner, as far as possible, as if every part thereof had been or formed part of the stock of the company originally subscribed.

This reproduces sec. 22 of the old act, except that the Secretary of State is substituted for the Govr. in Council.



## CALLS

**46. Calling in of moneys unpaid on shares.**—Not less than ten per centum upon the allotted shares of stock of the company shall, by means of one or more calls formally made, be called in and made payable within one year from the incorporation of the company; the residue when and as the letters patent, or the provisions of this Act, or the by-laws of the company direct.

This section is new under the old law the 10 per cent had to be paid in and deposited to credit of Receiver General before Letters Patent were issued.

**47. Interest on calls overdue.**—A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed; and if a shareholder fails to pay and call due by him, on or before the day appointed for the payment thereof, he shall be liable to pay interest for the same, at the rate of six per cent per annum, from the day appointed for payment to the time of actual payment thereof.

This section reproduces sec. 39. Although the legal rate of interest has been reduced to 5 per cent, the old rate of 6 % has been allowed to remain in this section.

**48. Payment in advance on shares.**—The directors may, if they think fit, receive from any shareholder willing to advance the same, all or any part of the amounts due on the shares held by such shareholder, beyond the sums then actually called for;—any upon the moneys so paid in advance, or so much thereof as, from time to time, exceeds the amount of the calls then made upon the shares in respect of which such advance is made, the company may pay interest at such rate, not exceeding eight per cent per annum, as the shareholder who pays such sum in advance and the directors agree upon.

This reproduces sec. 40 of the old act, without change.

**49. Forfeiture of shares for non-payment of calls.**—If, after such demand or notice as is prescribed by the letters patent, or by resolution of the directors, or by the by-laws of the company, any call made upon any share is not paid within such time as, by such letters patent or by resolution of the directors or by the by-laws, is limited in that behalf, the directors, in their discretion, by vote to that effect duly recorded in their minutes, may summarily declare forfeited any shares whereon such payment is not made; and the same shall thereupon become the property of the company and may be disposed of as, by the by-laws of the company or otherwise, they prescribe; but, notwithstanding such forfeiture, the holder of such shares at the time of forfeiture shall continue liable to the then creditors of the company for the full

amount unpaid on such shares at the time of forfeiture, less any sums which are subsequently received by the company in respect thereof.

This reproduces sec. 41 of the old act. The words "or by resolution of the Directors" in the 2d and 4th lines are new.

**50. Enforcement of payment of calls by action.—**

The directors may, if they see fit, instead of declaring forfeited any share or shares, enforce payment of all calls, and interest thereon, by action in any court of competent jurisdiction; and in such action it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount, in respect of one call or more, upon one share or more, stating the number of calls and the amount of each call, whereby an action has accrued to the company under this Act.

This reproduces sec. 42 of the old act. The last parag. of the old sec. which gave *prima facie* validity to any certificate of any officer of the Company, etc., is omitted.

**TRANSFER OF SHARES.**

**51. Transfer of shares valid only after entry.—**

No transfer of shares, unless made by sale under execution, or under the decree, order or judgment of a court of competent jurisdiction, shall be valid for any purpose whatever, until entry thereof is duly made in the register of transfers, except for the purpose of exhibiting the rights of the parties thereto towards each other, and of rendering the transferee liable, in the meantime, jointly and severally, with the transferrer, to the company and its creditors.

2. This section shall not apply to companies whose stock is listed and dealt with on any recognized Stock Exchange by means of scrip commonly in use, endorsed in blank, and transferable by delivery, which shall constitute valid transfers; the scrip holder shall not, however, be entitled to vote upon the shares until they are registered in his name in the books of the company.

The first parag. of this section reproduces sec. 43 of the old act without change. Subsec. 2 of this section is new and contains an important addition to the law on the question of transfers.

**52. Liabilities of directors as regards transfers of shares.—**No transfer of shares, whereof the whole amount has not been paid in, shall be made without the consent of the directors; and whenever any transfer of shares not fully paid in has been made with such consent, to a person, who is not apparently of sufficient means to fully pay up such shares, the directors shall be jointly and severally liable to the creditors of the company, in the

same manner and to the same extent as the transferring shareholder, but for such transfer, would have been; but if any director present when any such transfer is allowed does forthwith, or if any director then absent does, within twenty-four hours after he becomes aware thereof and is able so to do, enter on the minute book of the board of directors his protest against the same, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper there published, then in the newspaper published nearest thereto, such director may thereby, and not otherwise, exonerate himself from such liability.

This section reproduces sec. 49 of the old act, without change.

**53. Provision when shares are transmitted otherwise than by transfer.**—Whenever the interest in any shares of the capital stock of the company is transmitted by the death of any shareholder or otherwise, or whenever the ownership of or legal right of possession in any shares changes by any lawful means, other than by transfer according to the provisions of this Act, and the directors of the company entertain reasonable doubts as to the legality of any claim to such shares, the company may make and file, in one of the superior courts in the Province in which the head office of the company is situated, a declaration and petition in writing, addressed to the justices of the court, setting forth the facts and the number of shares previously belonging to the person in whose name such shares stand in the books of the company, and praying for an order or judgment adjudicating and awarding the said shares to the person or persons legally entitled to the same,—by which order or judgment the company shall be guided and held fully harmless and indemnified and released from every other claim to the said shares or arising in respect thereof;

2. Notice of the intention to present such petition shall be given to the person claiming such shares, or to the attorney of such person duly authorized for the purpose, who shall, upon the filing of such petition, establish his right to the shares referred to in such petition; and the time to plead and all other proceedings in such cases shall be the same as those observed in analogous cases before the said superior courts; Provided always, that the costs and expenses of procuring such order or judgment shall be paid by the person or persons to whom such shares are declared lawfully to belong; and that such shares shall not be transferred in the books of the company until such costs and expenses are paid,—saving the recourse of such person against any person contesting his right to such shares.

This section reproduces sec. 50 of the old act

**54. Restriction as to transfer.**—No share shall be transferable until all previous calls thereon are fully paid in.

This sec. reproduces sec. 51 of the old act.

**55. As to transfer by debtor to the company.**—The directors may decline to register any transfer of shares belonging to any shareholder who is indebted to the company.

This sec. reproduces sec. 52 of the old act.

**56. Transfer by personal representative.**—Any transfer of the shares or other interest of a deceased shareholder, made by his personal representative, shall, notwithstanding such personal representative is not himself a shareholder, be of the same validity as if he had been a shareholder at the time of his execution of the instrument of transfer.

This sec. reproduces sec. 53 of the old act.

#### BORROWING POWERS.

**57.** If authorized by by-law, sanctioned by a vote of not less than two-thirds in value of the subscribed stock of the company represented at a general meeting duly called for considering the by-law, the directors may from time to time,—

- (a.) borrow money upon the credit of the Company;
- (b.) limit or increase the amount to be borrowed;
- (c.) issue bonds, debentures or other securities of the Company and pledge or sell the same for such sums and at such prices as may be deemed expedient; but no such bonds, debentures or other securities shall be for a less sum than one hundred dollars each;
- (d.) hypothecate, mortgage, or pledge the real or personal property of the Company, or both, to secure any such bonds, debentures or other securities and any money borrowed for the purposes of the Company.

This reproduces sec. 37 of the old act. But sec. (b) is new and the words "and pledge or sell the same" in sec. (c) are new. The old section also omitted the words "bonds or other securities inserted in sec. (c) above. Subsec. (d) reproduces in part subsec. (b) of the old sec. 37. But the word "mortgage" in the first line is new and the words "or both" in the second line is new, and the old sec read "to secure any sums borrowed by the Company" The limitation of the borrowing power to 75 % of the paid up stock contained in the old act has been omitted.

#### DIVIDENDS.

**58. Dividend not to impair capital.**—No dividend shall be declared which will impair the capital of the company.

This sec. reproduces sec. 73 of the old act.

**59. Debts to company may be deducted from**

**dividends.**—The directors may deduct from the dividends payable to any shareholder all such sums of money as are due from him to the company, on account of calls or otherwise.

This section reproduces sec. 36 of the old act.

#### DIRECTORS.

**60. Board of directors.**—The affairs of the company shall be managed by a board of not more than fifteen and not less than three directors.

This sec. reproduces sec. 28 of the old act.

**61. Provisional directors.**—The persons named as such, in the letters patent, shall be the directors of the company, until replaced by others duly appointed in their stead.

This sec. reproduces sec. 29 of the old act.

**62. Failure to elect directors, how remedied.**—If, at any time, an election of directors is not made, or does not take effect at the proper time, the company shall not be held to be thereby dissolved; but such election may take place at any subsequent general meeting of the company duly called for that purpose; and retiring directors shall continue in office until their successors are elected.

This reproduces sec. 34 of the old act.

**63. Qualifications of subsequent directors.**—No person shall be elected or appointed as a director thereafter unless he is a shareholder, owning stock absolutely in his own right, and to the amount required by the by-laws of the company, and not in arrear in respect of any call thereon.

This reproduces sec. 30 of the old act. But the provision of the old act requiring a majority of Directors to be resident in Canada is omitted.

**64. By-law for increase or decrease of number of directors.**—The company may, by by-law, increase to not more than fifteen, or decrease to not less than three, the number of its directors, or may change the company's chief place of business in Canada; but no by-law for either of the said purposes shall be valid or acted upon unless it is approved by a vote of at least two-thirds in value of the stock represented by shareholders present at a special general meeting duly called for considering the by-law; nor until a copy of such by-law, certified under the seal of the company, has been deposited with the Secretary of State, and has also been published in the *Canada Gazette*.

This reproduces sec. 31 of the old act, without change.

**65. Election of directors.**—Directors of the company shall be elected by the shareholders, in general meeting of the company assembled at some place within Canada—at such times, in such manner and for such term, not exceeding two years, as the letters patent, or in default thereof, as the by-laws of the company prescribe.

This reproduces sec 32 of the old act.

**66. Mode and times of election. Yearly.**—In the absence of other provisions in such behalf, in the letters patent or by-laws of the company,—

(a.) The election of directors shall take place yearly, and all the directors then in office shall retire, but, if otherwise qualified, they shall be eligible for re-election ;

(b.) Every election of directors shall be by ballot ;

(c.) Any vacancy occurring in the board of directors may be filled, for the remainder of the term, by the directors from among the qualified shareholders of the company ;

(d.) The directors shall, from time to time, elect from among themselves a president and, if they see fit, a vice-president of the company ; and may also appoint all other officers thereof.

This reproduces sec. 33 of the old act. But subsections (b) and (c) of sec. 33 of the old act are omitted, providing for notice of general meetings, proxies, etc.

**67. Directors indemnified in suits, etc., against the company.**—Every director of the company, and his heirs, executors and administrators, and estate and effects, respectively, may, with the consent of the company, given at any general meeting thereof, from time to time, and at all times, be indemnified and saved harmless out of the funds of the company, from and against all costs, charges and expenses whatsoever which he sustains or incurs in or about any action, suit or proceeding which is brought, commenced or prosecuted against him, for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him, in or about the execution of the duties of his office ; and also from and against all other costs, charges and expenses which he sustains or incurs, in or about or in relation to the affairs thereof,—except such costs, charges or expenses as are occasioned by his own wilful neglect or default.

This reproduces sec. 82 of the old act.

#### POWERS OF DIRECTORS.

**68. Powers and duties of directors.**—The directors of the company may administer the affairs of the company in all things, and make or cause to be made for the company, any

description of contract which the company may, by law, enter into; and may, from time to time, make by-laws not contrary to law, or to the letters patent of the company, or to this Act, for the following purposes:—

- (a) The regulating of the allotment of stock, the making of calls thereon, the payment thereof, the issue and registration of certificates of stock, the forfeiture of stock for non-payment, the disposal of forfeited stock and of the proceeds thereof, and the transfer of stock;
- (b.) The declaration and payment of dividends;
- (c.) The number of the directors, their term of service, the amount of their stock qualification, and their remuneration, if any;
- (d.) The appointment, functions, duties and removal of all agents, officers and servants of the company, the security to be given by them to the company and their remuneration;
- (e.) The time and place for the holding of the annual meetings of the company, the calling of meetings, regular and special, of the board of directors and of the company, the quorum, the requirements as to proxies, and the procedure in all things at such meetings;
- (f.) The imposition and recovery of all penalties and forfeitures which admit of regulation by by-law;
- (g.) The conduct, in all other particulars, of the affairs of the company:

2. The directors may, from time to time, repeal, amend or re-enact such by-laws; but every such by-law (except by-laws made respecting the matters set forth in paragraph (d.) of subsection 1 of this section) and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the company, duly called for that purpose, shall only have force until the next annual meeting of the company, and in default of confirmation thereat, shall, at and from that time only, cease to have force.

This reproduces sec. 35 of the old act. But the words "except by laws made respecting, etc." in the 2d line of subsec. 2 are new. Further the provision of the old act that no by-law for allotment or sale of unissued stock at a discount, etc., or for remuneration of Directors, etc., shall be valid unless confirmed is omitted.

#### LIABILITY OF DIRECTORS AND OFFICERS.

**69. Liability of directors declaring a dividend when company is insolvent, etc.**—If the directors of the company declare and pay any dividend when the company is insolvent, or any dividend, the payment of which renders the company insolvent, or impairs the capital thereof, they shall be jointly and severally liable, as well to the company as to the individual shareholders and creditors thereof, for all the debts of



the company then existing, and for all thereafter contracted during their continuance in office, respectively; but if any director present when such dividend is declared does forthwith, or if any director then absent does, within twenty-four hours after he becomes aware thereof and able so to do, enter on the minutes of the board of directors his protest against the same, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper there published, then in the newspaper published nearest thereto, such director may thereby, and not otherwise, exonerate himself from such liability.

This section reproduces section 58 of the old act, without change.

**70. No loan by company to shareholders.**—No loan shall be made by the company to any shareholder; if such loan is made, all directors and other officers of the company making the same, or in anywise assenting thereto, shall be jointly and severally liable for the amount of such loan, with interest, to the company, —and also to the creditors of the company for all debts of the company then existing, or contracted between the time of the making of such loan and that of the repayment thereof.

This section reproduces section 59 of the old act without change, except that the reference in the old section to Loan Companies is omitted.

**71. Liability of directors for wages.**—The directors of the company shall be jointly and severally liable to the clerks, labourers, servants and apprentices thereof, for all debts not exceeding six months' wages due for service performed for the company whilst they are such directors respectively: but no director shall be liable to an action therefor, unless the company is sued therefor within one year after the debt becomes due, nor unless such director is sued therefor within one year from the time when he ceased to be such director, nor unless an execution against the company in respect of such debt is returned unsatisfied in whole or in part; and the amount unsatisfied on such execution shall be the amount recoverable with costs from the directors.

This section reproduces section 60 of the old act without change.

#### GENERAL MEETINGS.

**72. Special general meetings.**—Shareholders who hold one-fourth part in value of the subscribed stock of the company may, at any time, call a special meeting thereof for the transaction of any business specified in such written requisition and notice as they make and issue to that effect.

This section reproduces section 74 of the old act without change.

**73. Notice.**—In the absence of other provisions in such behalf in the letters patent or by-laws of the company,—

(a.) notice of the time and place for holding a general meeting of the company shall be given at least fourteen days previously thereto, in some newspaper published in the place where the head office or chief place of business of the company is situate, or if there is no such newspaper, then in the place nearest thereto in which a newspaper is published ;

(b) at all general meetings of the company, every shareholder shall be entitled to give one vote for each share then held by him ; such votes may be given in person or by proxy—the holder of any such proxy being himself a shareholder ; but no shareholder shall be entitled, either in person or by proxy, to vote at any meeting unless he has paid all the calls then payable upon all the shares held by him ; all questions proposed for the consideration of the shareholders shall be determined by the majority of votes—the chairman presiding at such meeting having the casting vote in case of an equality of votes.

This reproduces section 33, subsections (b) and (c) of the old act. The only change is that in the old act, the delay for notice was twenty-one days.

#### BOOKS OF THE COMPANY.

**74. Books to be kept and what to contain.**—The company shall cause a book or books to be kept by the secretary, or by some other officer specially charged with that duty, wherein shall be kept recorded,—

(a.) A copy of the letters patent incorporating the company, and of any supplementary letters patent, and of the preliminary memorandum of agreement and of all by laws thereof ;

(b.) The names, alphabetically arranged, of all persons, who are or have been shareholders ;

(c.) The address and calling of every such person, while such shareholder, as far as can be ascertained ;

(d.) The number of shares of stock held by each shareholder ;

(e.) The amounts paid in and remaining unpaid, respectively, on the stock of each shareholder ;

(f.) The names, addresses and calling of all persons who are or have been directors of the company, with the several dates at which each became or ceased to be such director ;

2. A book called the register of transfers shall be provided, and in such book shall be entered the particulars of every transfer of shares in the capital of the company.

This section reproduces section 43 of the old act, the words "the preliminary memorandum of agreement" in the second and third lines of subsection of this section, and the

words "as far as can be ascertained" in the second line of subsection (c) of this section, are new.

**75. Books to be open for inspection and taking extracts therefrom.**—Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open, at the head office or chief place of business of the company, for the inspection of shareholders and creditors of the company, and their personal representatives, and of any judgment creditor of a shareholder; and every such shareholder, creditor or personal representative may make extracts therefrom.

This section reproduces section 44 of the old act, the words "at the head office or chief place of business of the Company" in line three of this section, and the words "and of any judgment creditor of the shareholder", are new.

**76. Penalty for false entries, refusal to allow inspection, etc.**—Every director, officer or servant of the company, who knowingly makes or assists in marking any untrue entry in any such book, or who refuses or wilfully neglects to make any proper entry therein, or to exhibit the same, or to allow the same to be inspected and extracts to be taken therefrom, is guilty of an indictable offence.

This reproduces section 45 of the old act; the only difference is that under the old law the offence was a misdemeanor, instead of as now an indictable offence.

**77. Penalty for neglect.**—Every company which neglects to keep such book or books as aforesaid, shall be guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding twenty dollars for each day that such neglect continues.

This section reproduces section 46 of the old act. The old section however made the penalty simply forfeiture of its corporate rights.

**78. Books to be *prima facie* evidence.**—Such books shall be *prima facie* evidence of all facts purporting to be thereby stated, in any action, suit or proceeding against the company or against any shareholder.

This section reproduces section 47 of the old act.

#### INSPECTION.

**79. Application for judicial inspection of affairs.**—Upon the application of shareholders representing not less than one fourth in value of the issued capital stock of the company a judge in the province in which the chief place of business of the

company is situated may, if he deems it necessary, appoint a competent inspector to investigate the affairs and management of the company. The application shall be supported by such evidence as the judge may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same. The inspector shall report to the judge the result of the investigation. The expense of such investigation shall, in the discretion of the judge, be defrayed by the company, or by the applicants, or partly by the company and partly by the applicants as he may order, and, if he thinks fit, he may require the applicants to give security to cover the probable cost of the investigation, and he may make necessary rules and prescribe the manner in which and the extent to which the investigation shall be conducted, or the judge may, if he deems it necessary, examine the officers or directors of the company under oath as to matters that come in question.

2. The company may by resolution passed at the annual meeting, or at a special general meeting called for the purpose, appoint an inspector to examine into the affairs of the company. The inspector so appointed shall have the same powers and perform the same duties as an inspector appointed by a judge, with this exception, that instead of making his report to the judge he shall make the same in such manner and to such persons as the company by said resolution directs.

3. It shall be the duty of all officers and agents of the company to produce for the examination of any such inspector all books and documents in their custody or power. Any such inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding twenty dollars, in respect of each offence.

4. In this section the expression "judge" means in Ontario a judge of the High Court of Justice; in Quebec it means a judge of the Superior Court in and for that province; in Nova Scotia, New Brunswick and British Columbia, it means a judge of the Supreme Court in and for each of those provinces respectively; in Manitoba it means a judge of His Majesty's Court of King's Bench for Manitoba; in Prince Edward Island it means a judge of the Supreme Court of Judicature; in the North-west Territories it means a judge of the Supreme Court of the North-west Territories; and in the Yukon Territory it means a judge of the Territorial Court.

This section is new and is taken from the Ontario act sec. 80. R., S. O. c. 191 as amended by 61 Vic. cap. 19. 62 Vic. cap. 11 and 63 Vic. cap. 23 Ontario. And the B. C. act, sec. 105, 61 Vic. cap. 44.

## SERVICE OF PROCESS, ETC.

**80. Service of process on the company.**—Any summons, notice, order or other process or document required to be served upon the company, may be served by leaving the same at the office in the city or town in which its chief place of business in Canada is situate, with any adult person in the employ of the company, or on the president or secretary of the company, or by leaving the same at the domicile of either of them, or with any adult person of his family or in his employ; or if the company has no known office or chief place of business, and has no known president or secretary, the court may order such publication as it deems requisite to be made in the premises; and such publication shall be held to be due service upon the company.

This reproduces section 62 of the old act, the words "in Canada" in line 4 are new.

**81. Use of common seal dispensed with in certain cases.**—Any summons, notice, order or proceeding requiring authentication by the company may be signed by any director, manager or other authorized officer of the company, and need not be under the seal of the company.

This section reproduces section 63 of the old act without change.

**82. Service of notices upon members.**—Notices to be served by the company upon the shareholders may be served either personally or by sending them through the post, in registered letters, addressed to the shareholders at their places of abode as they appear on the books of the company.

This section reproduces section 64 of the old act without change.

**83. Service of notice by post.**—A notice or other document served by post by the company on a shareholder, shall be held to be served at the time when the registered letter containing it would be delivered in the ordinary course of post; and to prove the fact and time of service it shall be sufficient to prove that such letter was properly addressed and registered, and was put into the post office, and the time when it was put in, and the time requisite for its delivery in the ordinary course of post.

This section reproduces section 65 of the old act without change. This is in accord with the principle laid down recently by the Supreme Court of Canada in *Magann & Auger*, 31 S. C. R. 186.

**84. Evidence of by-laws.**—A copy of any by-law of the company, under its seal, and purporting to be signed by any officer of the company, shall be received as against any shareholder of the company, as *prima facie* evidence of such by-law in all courts in Canada.

This reproduces old section 66 without change.

**85. Actions between company and shareholders.**—Any description of action may be prosecuted and maintained between the company and any shareholder thereof; and no shareholder shall, by reason of being a shareholder, be incompetent as a witness therein.

This section reproduces section 67 of the old act without change.

**86. Mode of incorporation, etc., how to be set forth in legal proceedings.**—In any action or other legal proceeding, it shall not be requisite to set forth the mode of incorporation of the company, otherwise than by mention of it under its corporate name, as incorporated by virtue of letters patent—or of letters patent and supplementary letters patent, as the case may be—under this Act; and the notice in the *Canada Gazette*, of the issue of such letters patent or supplementary letters patent, shall be *prima facie* proof of all things therein contained; and on production of the letters patent, or supplementary letters patent, or of any exemplification or copy thereof, the fact of such notice shall be presumed; and, except in any proceeding by *scire facias* or otherwise for the purpose of rescinding or annulling the same, the letters patent or supplementary letters patent, or any exemplification or copy thereof, shall be conclusive proof of every matter and thing therein set forth.

This section reproduces section 68 of the old act, except that the references to copies under the Great Seal are omitted.

**87. Proof may be by declaration or affidavit.**—Proof of any matter which is necessary to be made under this Act may be made by oath or affirmation, or by solemn declaration, before any justice of the peace, or any commissioner for taking affidavits, to be used in any of the courts in any of the Provinces of Canada, or any notary public, each of whom is hereby authorized and empowered to administer oaths and receive affidavits and declarations for that purpose.

This section reproduces section 77 of the old act without change.

#### STATEMENTS AND RETURNS.

**88. Full statement of affairs at each meeting for elections.**—The directors of every company shall lay before its shareholders annually a full printed statement of the affairs and financial position of the company at or before each general meeting of the company for the election of directors.

This reproduces section 85 of the old act.

**89. Return to be made.**—It shall be the duty of the company to make a return to the Secretary of State at any time a written request may be made therefor, containing the following particulars.

- (1.) The amount of the capital of the company, and the number of shares into which it is divided.
- (2.) The number of shares taken from the commencement of the company up to the date of the summary.
- (3.) The amount of calls made on each share.
- (4.) The total amount of calls received.
- (5.) The total amount of calls unpaid.
- (6.) The total amount of shares forfeited.
- (7.) The names, addresses and occupations of the persons who have ceased to be members within the twelve months proceeding, and the number of shares held by each of them.

If any company for a space of one month neglects or refuses to comply with such request the company shall incur a penalty not exceeding twenty dollars for every day during which such default continues; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

This is now. Section 103 of the old act provided for a somewhat similar statement annually to the Minister of Finance and Receiver General in the case of loan companies.

#### REPEAL.

**90. Acts repealed.** Savings as to certain loan companies. R.S.C., c. 119 and 62-63 V. c. 41, s. 46.—The Acts mentioned in the second schedule to this Act are hereby repealed to the extent specified in the third column of that schedule, except in so far as they apply to loan companies incorporated or formed, under the provisions of *The Companies Act*, before the eleventh day of August, 1899.



## FIRST SCHEDULE

## FORM A.

(Section 7.)

APPLICATION FOR INCORPORATION UNDER THE COMPANIES  
Act, 1902.

To the Honourable the Secretary of State of Canada :

The application of

respectfully sheweth as follows :—

The undersigned applicants are desirous of obtaining letters patent under the provisions of *The Companies Act*, 1902, constituting your applicants and such others as may become shareholders in the Company, thereby created a body corporate and politic under the name of

“ Limited,”

or such other name as shall appear to you to be proper in the premises.

The undersigned have satisfied themselves and are assured that the proposed corporate name of the Company under which incorporation is sought is not the corporate name of any other known Company incorporated or unincorporated or any name liable to be confounded therewith or otherwise on public grounds objectionable.

Your applicants are of the full age of 21 years.

The purposes for which incorporation is sought by the applicants are:

The chief place of business of the proposed company within Canada will be at \_\_\_\_\_ in the  
County of \_\_\_\_\_ in the Province  
of \_\_\_\_\_

The amount of the capital stock of the Company is to be \$

The said stock is to be divided into  
shares of \$ \_\_\_\_\_ each.

The following are the names in full and the address and calling of each of the applicants with the amount of stock taken by each applicant respectively.

Applicant.	Amount of stock Subscribed.

The said  
will be the first or provisional directors of the Company.

A stock-book has been opened and a memorandum of agreement by the applicants under seal in accordance with the statute has been executed in duplicate—one of the duplicates being transmitted herewith.

The undersigned therefore request that a charter may be granted constituting them and such other persons as hereafter become shareholders in the Company, a body corporate and politic for the purposes above set forth.

**Signatures of Witnesses.**

### Signatures of Applicants.

[illegible]

Dated at

**this**

day of

19

NOTE—If any cash has been paid in on stock or if any property is intended to be accepted on account of stock it should be here stated.

## FORM B.

(Section 7.)

(To be executed in duplicate; one duplicate to be transmitted with the application.)

The.....Company of.....(Limited).

## MEMORANDUM OF AGREEMENT AND STOCK BOOK.

We the undersigned do hereby severally covenant and agree each with the other to become incorporated as a company under the provisions of *The Companies Act, 1902*, under the name of The..... Company of..... (Limited), or such other name as the Secretary of State may give to the Company, with a capital of..... dollars, divided into..... shares of..... dollars each.

And we do hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital stock of the said Company set opposite our respective names as hereunder and hereafter written, and to become shareholders in such Company to the said amounts.

In witness whereof we have signed.

Name of Subscriber.	Seal.	Amount of Subscription.	Date and Place of Subscription.		Residence of Subscriber.	Name of Witness.
			Date.	Place.		
		\$				

## FORM C.

(Section 10.)

Public notice is hereby given that under *The Companies Act*, 1902, letters patent have been issued under the Seal of the Secretary of State, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ incorporating [here state names, address and calling of each corporator named in the letters patent], for the purpose of [here state the undertaking of the Company, as set forth in the letters patent], by the name of [here state the name of the Company as in the letters patent] with a total capital stock of \_\_\_\_\_ dollars divided into \_\_\_\_\_ shares of \_\_\_\_\_ dollars.

Dated at the office of the Secretary of State of Canada, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

A. B.,  
Secretary.

## FORM D.

(Section 29.)

Public notice is hereby given, that under *The Companies Act*, 1902, supplementary letters patent have been issued under the Seal of the Secretary of State, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, whereby the undertaking of the Company has been extended to include [here set out the other purposes or objects mentioned in the supplementary letters patent.]

Dated at the office of the Secretary of State of Canada, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

A. B.,  
Secretary.

## FORM E.

## (Section 45.)

Public notice is hereby given, that under *The Companies Act*, 1902, supplementary letters patent have been issued under the Seal of the Secretary of State, bearing date the

day of \_\_\_\_\_, whereby the total capital stock of [here state the name of the Company] is increased [or reduced, as the case may be] from \_\_\_\_\_ dollars to \_\_\_\_\_ dollars.

Dated at the office of the Secretary of State of Canada, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

A. B.,  
Secretary.

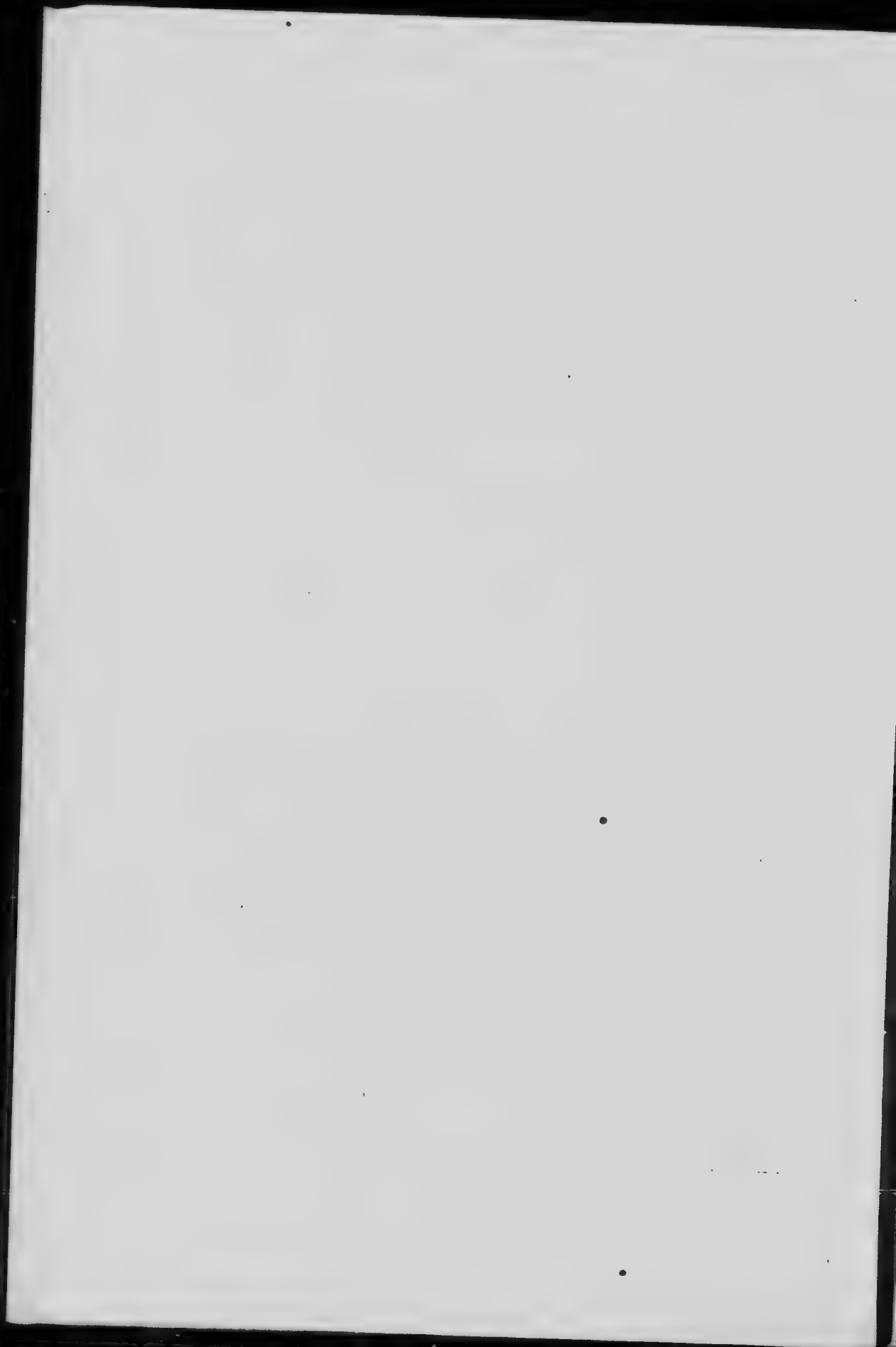
## SECOND SCHEDULE.

## ENACTMENTS REPEALED.

Except in so far as they apply to Loan Companies incorporated or formed, under the provisions of *The Companies' Act*, before August 11, 1899:

## (Section 90.)

Year and Chapter.	Title.	Extent of Repeal.
Revised Statutes of Canada, c. 119.....	An Act respecting the incorporation of Joint Stock Companies by Letters Patent.....	The whole Act.
1897, c. 27.....	An Act to amend the Companies Act.	The whole Act.
1898, c. 50.....	An Act further to amend the Companies Act .....	The whole Act.
1899, c. 40.....	An Act to amend the Companies Clauses Act and the Companies Act.	By striking out of s. 1 the words "or <i>The Companies Act</i> , chapter 119."





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